JAMES SHEPPARD AND OTHERS, APPELLANTS *vs.* LEMUEL TAYLOR AND OTHERS, APPELLEES.

The ship Warren, owned in Baltimore, sailed from that port in 1806, the officers and seamen having shipped to perform a voyage to the northwest coast of America, thence to Canton, and thence to the United States. The ship proceeded under the instructions of the owners to Conception Bay on the coast of Chili, by the orders of the supercargo, he having full authority for that purpose. The cargo had in fact been put on board for an illicit trade against the laws of Spain, on that coast. After the arrival of the Warren, she was seized by the Spanish authorities, the vessel and cargo condemned, and the proceeds ordered to be deposited in the royal chest. The officers and seamen were imprisoned, and returned to the United States; some after eighteen months, and others not until four years from the term of their departure. The king of Spain subsequently ordered the proceeds of the Warren and cargo to be repaid to the owners, but this was not done; afterwards, the owners having become insolvent assigned their claims for the restoration of the proceeds, and for indemnity from Spain, to their separate creditors; and the commissioners under the Florida treaty awarded to be paid to the assignees a sum of money, part for the cargo, part for the freight, and part for the ship Warren. The officers and seamen having proceeded against the owners of the ship by libel for their wages, claiming them by reason of the change of voyage, from the time of her departure until their return to the United States respectively, and having afterwards claimed payment out of the money paid to the assignees of the owners under the treaty, it was held that they were entitled, towards the satisfaction of the same, to the sum awarded by the commissioners for the loss of the ship and her freight, with certain deductions for the expenses of prosecuting the claim before the commissioners: with interest on the amount from the period when a claim for the same from the assignees was made by a petition.

If the ship had been specifically restored, the seamen might have proceeded against it in the admiralty in a suit in rem for the whole compensation due to them. They have by the maritime laws an indisputable lien to this extent. There is no difference between the case of a restitution in specie of the ship itself, and a restoration in value. The lien re-attaches to the thing, and to whatever is substituted for it. This is no peculiar principle of the admiralty. It is found incorporated into the doctrines of courts of common law.

Freight, being the earnings of the ship in the course of the voyage, is the natural fund out of which the wages are contemplated to be paid: for although the ship is bound by the lien of the wages, the freight is relied on as the fund to discharge it, and is also relied on by the master to discharge his personal responsibilities.

Over the subject of seamen's wages the admiralty has an undisputed jurisdiction, in rem, as well as in personam; and wherever the lien for the wages exists and attaches upon the proceeds, it is the familiar practice of that court to exert its jurisdiction over them, by way of monition to the parties holding the proceeds. This is familiarly known in the cases of prize and bottomry, and salv-

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age; and is equally applicable to the case of wages. The lien will follow the ship, and its proceeds, into whose hands soever they may come by title or purchase from the owner.

APPEAL from the circuit court for the district of Maryland.

In December 1810, a libel was filed by James Sheppard and others, officers and seamen of the merchant ship Warren, against Lemuel Taylor, Samuel Smith, James A. Buchanan, John Hollins, and Michael M'Blair, owners of the merchant ship Warren, claiming wages; they having shipped in 1806, at Baltimore, for a voyage from that port to the northwest coast, thence to Canton, and home to the United States.

The facts of the case, as they appeared in the libel and supplemental libels, petition, and in the depositions and documents filed and taken in the case, were: that the ship Warren, of the burthen of about six hundred tons, and armed with twenty-two guns, commanded by Andrew Sterrett, sailed from Baltimore on the 12th of September 1806. The crew, including the officers and apprentices, consisted of about one hundred and twelve persons, and were shipped for a voyage designated in the shipping articles, to be from the port of Baltimore to the northwest coast of America, thence to Canton, and home to the United States. No other voyage but that expressed in the articles was known to be intended by any one on board of the Warren, except Mr Pollock, who was the supercargo of the vessel. There were, however, two sets of instructions; one, those which expressed the voyage as stated, and which were given to captain Sterrett; the other, sealed, private instructions, and which were delivered to Mr Pollock.

When the ship arrived at a certain latitude, the sealed instructions were opened, and were communicated to the captain. These instructions changed the destination of the ship, and the nature and character of the voyage. They gave the entire control over the course of the voyage to Mr Pollock: and from that time she proceeded directly for the coast of Chili, to prosecute an illicit and smuggling trade with the Spanish provinces, on the western coast of South America; all trade with those provinces being then notoriously forbidden, under

heavy penalties, unless conducted under a license from the crown of Spain.

The officers and crew of the Warren protested against this deviation from the prescribed voyage; and captain Sterrett, from disappointed and wounded feelings, disdaining himself to engage in an illicit trade, and unwilling to expose his officers and men to its perils and consequences, became partially deranged, and shot himself as the Warren was doubling Cape Horn.

Mr Evans, the chief mate, succeeded in the nominal command of the ship; but Mr Pollock asserted and maintained the entire control over her; and he ordered her to steer direct for Conception Bay and the port of Talcahuana, on the coast of Chili, where they were to feign distress, and ask for an asylum.

The vessel arrived on the 20th of January 1807, within a short distance of that port, after an absence from Baltimore of one hundred and twenty days; and on her arrival was hailed by the guarda costas of the government. Mr Pollock answered in Spanish, and took the ship's papers with him on shore, where he had an interview with the commandant of Talcahuana.

During his absence an altercation took place between captain Evans and the Spanish armed vessels, which resulted in the exchange of some guns, but no lives were lost on either side. Mr Pollock having remained on shore under a flag of truce, on the following day communicated by a verbal message to captain Evans, an order to enter the port; alleging, that the firing on the Warren by the guarda costas had been through mistake, and that all things would be well managed. The crew remonstrated, and proposed to proceed with the ship on the voyage for which they had sailed; and to leave the supercargo on shore. Captain Evans refused to enter the port, unless by a written order, which was then sent to him; and he was informed by the messenger that Mr Pollock was under no restraint whatever.

The Warren then entered the port of Talcahuana, and captain Evans went on shore; and the seamen, under a pretence that their depositions were required relative to the death of captain Sterrett, were taken on shore, twenty at a time, and at once put into prison. The officers and the apprentices being

put on board the ship, proposed to rescue her, and communicated the purpose to Mr Pollock, who immediately took his baggage and that of captain Evans on shore. Soon afterwards some Spanish officers came on board the Warren, unbent the sails, and unshipped the rudder.

The officers and crew of the ship were ordered to Conception, and thence were marched to various prisons and dungeons, and suffered captivity from eight months to four years, being permitted to return to the United States at various periods. The apprentices and some of the officers were the first who were allowed to return; their absence from the United States was after an imprisonment of from six to eighteen months.

On the part of the libellants it was alleged that by arrangements between the Spanish commandant and Mr Pollock, the cargo was smuggled on shore. By a sentence of a court the vessel and cargo were sold, and the proceeds of the same were ordered to be deposited in the king's treasury, subject to an appeal interposed by the supercargo. Thus, either by the private arrangements between Mr Pollock and the Spanish governor, or by the proceedings of the court, the voyage was broken up, and the ship and the whole of the cargo were sold. The cargo appeared to have been peculiarly adapted to the coast of Chili and Peru, and altogether unfit for the northwest coast of America or Canton.

The libellants claimed wages from the time of the sailing of the Warren, to the time of their return to the United States, respectively; deducting the wages advanced, and any sum of money, received as wages, during absence.

The proceedings in the case, asserted by the libellants to be amply accounted for by various causes, were delayed from 1810 to 1819. In 1819 *all* the owners became *insolvent:* and, on the 13th December 1819, Lemuel Taylor assigned to Robert Oliver the *spes recuperandi* of his interest in the Warren, her cargo, &c. On the 9th of November 1820, Smith and Buchanan assigned their interest in the Warren and cargo to Elicott and Meredith, trustees, for the use of the Bank of the United States at Baltimore: and, on the 15th of May 1821, Hollins and M'Blair assigned their interest in said vessel, cargo, &c. to the Union Bank of Maryland.

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The owners of the ship Warren and cargo, having made application to the crown of Spain for the restoration of the proceeds of the same, which were under the decree of the court condemning the same to be deposited in the royal treasury; the following proceedings took place:

COPY OF THE ROYAL ORDER OF RESTITUTION.

Most Excellent Sir:—In the month of September 1806, the ship called the Warren, belonging to Samuel Smith, Buchanan, Hollins, M'Blair, and Lemuel Taylor, of Baltimore, sailed from that port, under the command of Andrew Sterrett, and laden with sundry merchandize for Canton in China. In the month of December following, after the vessel and crew had experienced various misfortunes, they were in the latitude of Conception in Chili; when finding it impossible to continue the voyage, they were obliged to take shelter in some port contiguous to that of Talcahuana, on the 20th January 1807. The commander of the port gave the vessel permission to enter, which she had scarcely done, however, before she was taken possession of by troops, and her cargo seized, under the pretence of her being a smuggler. This was followed by a sentence for the confiscation and sale of the goods; which was carried into execution, notwithstanding the protest of the supercargo; and the proceeds, amounting to about three hundred thousand dollars, deposited in the royal chests, to await the decision of the appeal carried before and received by the supreme council of the Indies. Smith and his partners having received intelligence of this, made a complaint before the senate in Maryland; who looking only to the registers of the custom house, from which it appeared that the vessel had cleared out for China; declared the confiscation unjust, and gave the complainants permission to detain by way of indemnity, any property which might be in that country belonging to the Spanish government. Don Luis de Onis, the Spanish minister in the United States, received unofficial information of this decision; *and knowing that there had not been sufficient cause for the sentence of confiscation*, and desiring to prevent the disagreeable consequences which might arise from claims; made an agreement with Smith and his companions, that he would cause to be returned to them in this capital, the

amount of the proceeds of the cargo of the ship Warren, which had been deposited in the treasury: and that he would permit them to send out a vessel, laden with a small cargo of licit merchandize and some tobacco, upon which the customary royal duties were to be paid, for the purpose of prosecuting it; upon which they were to acknowledge themselves indemnified for all the losses and expenses resulting from the voyage. The king, having been gradually informed of what has been related, notwithstanding that the ministry here had received no intelligence of the confiscation in question, has thought proper for good and prudential reasons to ratify without delay the agreement made by the minister Onis with Smith, Buchanan and their companions; and has desired that instructions should be sent to your excellency, to have the ship Warren and her cargo, or the amount produced from their sale, delivered to the agents of those persons; and to permit them to import another small cargo of licit merchandize, and some leaf tobacco, upon which they must pay the royal duties, and take the value of it in silver or produce, paying duties in like manner. Which I notify to your excellency, by his majesty's orders, for your information; and in order that you may issue the necessary orders for its fulfilment. God preserve your excellency many years. Madrid, 13th June 1815.

LANDIZABAL.

To the Viceroy of Peru.

PETITION.

Most Excellent Sir:—We, Samuel Smith and Anthony Faulac, supercargo of the American ship Sydney, on behalf of the owners of the ship Warren and cargo, and by virtue of their power of attorney which we formally exhibit, respectfully appear before your excellency, and say: that by a royal order of the 13th June 1815, his catholic majesty has ordered restitution to be made of the said ship Warren and her cargo; and notwithstanding that she was sentenced to be confiscated, has been pleased, upon just and prudential considerations, to absolve her, and decree her restoration. Your excellency, in a decree of the 9th October 1815, commanded that the said royal order should be obeyed and fulfilled, and in order that the necessary measures conducive to the restitu-

tion of ship and cargo might be adopted, commanded the original order to be deposited in the archives; and a certified copy to be made of it, and annexed to the records on the case.

The immediate execution of this royal order is much to be desired under present circumstances; as it is necessary that we should return to the United States, where we must notify the result both to Don Luis de Onis, the Spanish minister plenipotentiary, and to the owners, for whom we are to recover the money from the royal treasury. For the fulfilment of the agreement, ratified by the Spanish sovereign, and of the decree of restitution sent to your excellency, there is nothing more requisite than the tenor of the royal order, which is sufficiently intelligible in its origin and object. Any delay will occasion a serious injury, and it was from his catholic majesty's desire to avoid this, that he ordered the restitution, even before he had received official notice of the confiscation. The ship Warren was sold in this capital; the purchaser's title to the property, which is the record of the proceedings on her confiscation, must therefore have been exhibited. The value of the cargo which his catholic majesty orders to be restored, is estimated in the royal order at near three hundred thousand dollars; which can by some means or other be procured; it being a matter of indifference to the owners whether it was deposited in the chests here, or in any others of the kingdom. Under the impression, therefore, that restitution ought to be made by the royal treasury, without any further testimony than the appraisement of the vessel and cargo; in conformity with the just and wise considerations which induced his majesty to decree the restoration and delivery, we implore your excellency that, on view of the records relative to the sale of the ship Warren, and knowing the sum at which her cargo was valued; you will be pleased to draw a bill against the officers of the royal treasury, and represent to them the serious injuries which would result from any delay in fulfilling the royal order issued under such circumstances. Wherefore, we pray and supplicate your excellency, that considering as duly exhibited the power of attorney, and in consequence of what has been set forth; you will be pleased to order an authenticated copy of the royal order, the fulfilment of which is required, to be annexed to the records of the sale of the ship Warren,

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and on view of them issue the orders for which we pray, as is just, and as we expect from your excellency's equity.

SMITH, NICHOLAS, ANTHONY FAULAC.

ORDER.

Lima, 21st March 1817.

Let it be filed with the records of the subject, and be seen by his majesty's officer of the exchequer, and let the tribunal of accompts make a report.

HIS EXCELLENCY'S RUBRICK.

Acebal.

REPORT.

Most Excellent Sir,—The tribunal of accompts, in compliance with your excellency's order of this date, has examined the petition of Don Samuel Smith and Don Antonio Faulac, filed with the records which originated in the letters written by the Spanish consul in Baltimore respecting the fitting out in that port, of the ship Warren, for the purpose of carrying on an illicit commerce in these seas; and all that it can represent is, that the said vessel was captured off the coasts, or in some port of the kingdom of Chili, and all the proceedings in such cases had, without this government being informed of any thing further than the sale of the vessel; which was sent hither for that purpose by the president of Chili; as will appear by his official letter of the 14th January 1808, registered in folio 22, and the proceeds deposited, at his request to the credit of his treasury. The vessel was sold for the sum of twenty-five thousand dollars, to Don Xavier Maria Aguirre, and the amount deposited in the royal chests in this capital, on the 4th of February, 1819, and along with two hundred sixty-three thousand two hundred and eighty-five dollars six reals, which had been received from various sources on deposit to the credit of the Chilian Treasury, was remitted to the Peninsula, in the ships Primero and Joaquina, in consequence of an official letter from the president of the 12th April 1809, and in obedience to an order of this viceregal government, dated 13th May of the same year. Authenticated copies of which are enclosed along with an account, No. 585, from the office of the royal chests in this capital. Your excellency on

view of all this, and of the royal order of the 13th June 1815, in which the proceeds of the vessel and cargo are ordered to be restored to the claimants, will resolve whatever you may deem most conducive to the royal service. Tribunal, 21st May 1817.

THE MARQUIS DE VALDELUIES,
LEON DE ASTOLAQUINE,
JOAQUIM BONET.

REPORT.

Most Excellent Sir,—The officer of the exchequer having examined the petition of Samuel Smith and his agents for the ship Warren, relative to the royal order of the 13th June 1815; in which his majesty commands that restitution should be made to them in this capital, of the proceeds of the cargo of the said vessel, which were deposited here, states; that, from the records of the only proceedings in the case which were had before this government, which are ready to be exhibited, it appears that the seizure, and confiscation took place in Chili, and that the amount of the proceeds of the vessel only was deposited in the chests here. It results therefore, that the supposition in the royal order, that the proceeds of the cargo had been deposited here is erroneous. And as moreover, the impoverished condition of this treasury, and its indispensable disbursements will not allow it to refund so large an amount; and as the royal order has so far been complied with as to permit the entrance of the vessel which they brought here; your excellency might find it expedient to give his majesty a knowledge of these facts, by sending him an authenticated copy of the records, in order that he may determine according to his sovereign pleasure. PAREJA.

Lima, 24th May 1818.

ORDER.

Lima, 3d June 1817.

Having seen the foregoing, let the records be carried to the superior board of the royal revenue; in order that it may determine as soon as possible what course ought to be pursued.

HIS EXCELLENCY'S RUBRICK.

Acebal.

[Sheppard and others *vs.* Taylor and others.]

The owners of the ship Warren and cargo, and their assignees, presented memorials for indemnity to the commissioners of the United States, appointed under the Florida treaty of 22d February 1819, and thereupon the commissioners made the following award:

SHIP WARREN, EVANS.

24th April 1824.

Thomas Ellicott and others, claimants

The board having heretofore received, examined, and allowed this claim as valid, this day proceeded to ascertain the amount thereof; and do award to the claimants the sum of one hundred and eighty-four thousand one hundred and sixty-two dollars and thirty-five cents (less the unclaimed interest of Bonnifils, a foreigner, of fifteen thousand and eleven dollars and thirty-seven cents), in full, for the loss sustained for the seizure, confiscation, and sale of this vessel and cargo, by the Spanish authorities at Talcahuana, in 1806; the proceeds of which sale were ordered to be paid to the claimants by his catholic majesty in 1815, which sum is to be thus divided:

No. 471.—To Robert and John Oliver, as trustees of Lemuel Taylor,	$ 63,920	88
Ellicott and Meredith, as trustees of Smith and Buchanan,	45,034	14
Union Bank of Maryland, as trustees of Hollins and M'Blair,	40,030	34
John Stiles, as executor of George Stiles,	20,015	17
The unclaimed interest of Bonnifils,	15,011	37
	$ 184,011	90

True copy from the record,

JOSEPH FORREST, Clerk.

Eight and one-third per cent, or one-twelfth in all cases, was abated from the gross amount. The items forming the aggregate sum allowed by the commissioners in the case of the ship Warren, Evans, master, were as follows:

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For the value of the vessel,	$ 25,000 00	
Cargo, - - - - -	125,131 93	
Taylor's adventure, -	4,025 83	
Premium, twelve per cent,	16,144 59	
Freight one-third off, -	13,860 00	
	$ 184,162 35	
Deduct therefrom,	150 45	
		$ 184,011 90

The last final report made to the department of state of the United States, on the 8th of June 1824, by the commissioners under the Florida treaty, contained the following general observations:

"In making such allowances to underwriters, the commission was well aware, that its effects would be to allow them more than they had lost, by the amount of the premium received from the party insured, which premium he had voluntarily paid, and must have lost in any event; so too in making the allowance of freight, the commission was well aware, that the full wages of seamen had not been paid, probably, in any of the cases where such freight was given. But in these and many other cases which occurred, the board having ascertained the full amount of the loss, distributed this amount so ascertained, amongst the different parties claiming it before them, and seeming to have a right to receive it (no matter in what character); without deciding or believing itself possessed of the authority to decide upon the merits of conflicting claims to the same subject. To whom of right, the sum thus awarded, when paid may belong, or for whom, how, or in what degree the receiver ought to be regarded as a trustee of the sum received, were questions depending upon the municipal laws of the different states of the union; the application of which to the facts existing in any case, the board did not feel itself authorized to make; and therefore abstained from instituting any inquiry as to the facts necessary to such a decision. These remarks the commission think it proper thus to state, lest their award may be considered as barring and finally settling pretensions, into which this board have in truth neither made, or believed itself authorized to make any examination whatever; but have purposely left open, for the adjudication of others, who will have better means of ascertaining the facts."

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Answers were put in by the owner of the Warren and cargo.

After the assignments made by them, answers were filed by the several assignees.

The answer of Robert Oliver denies the jurisdiction of the district court of the United States over the funds in his hands under the assignment. It states the assignment made to him by Lemuel Taylor on the 13th of December 1819, of his interest in the ship and cargo; and that the claim was prosecuted before the commissioners under the Florida treaty: and the net sum of fifty-eight thousand five hundred and ninety-four dollars and thirty-two cents was received; all knowledge of any agreement between the owners of the Warren and cargo with the seamen is denied.

The Bank of the United States answered and denied the jurisdiction of the court: and also all knowledge of the alleged contract between the original parties to the cause. The answer states that the firm of Smith and Buchanan executed a deed of trust to Ellicott and Meredith on the 9th of November 1820, being an assignment of their interest in the ship and cargo, in trust for the Bank of the United States, in the first instance; and that the trustees had received about fifty thousand dollars. That at May Term 1825 of the circuit court of the United States, the bank filed a bill in equity, calling on the trustees to pay them the money so received; and the same was paid into court: and the libellants filed a petition in the cause praying the court to retain for them so much of the said sum as they should prove themselves entitled to. The circuit court directed the sum received by the trustees to be deposited in the Bank of the United States.

Ellicott and Meredith, assignees in trust of Smith and Buchanan, answered, stating the assignment, and the payment of the money received by them. The Union Bank of Maryland answered, protesting against the jurisdiction of the court, and stating the assignment to the bank by Hollins and M'Blair, and that they were ignorant of the claims of the libellants.

On the 16th of March 1827, the district court dismissed the libel and petition; and the libellants appealed to the circuit court. In that court, on the 20th of May 1828, the decree of the circuit court was affirmed, and the libellants appealed to this court. It was understood, that both in the district and circuit courts, the decrees were entered pro forma.

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The case was argued by Mr Mayer and Mr Hoffman for the appellants: and for the appellees by Mr Taney and Mr Wirt.

Mr Hoffman and Mr Mayer, for the appellants:

1. The doctrine that "freight is the mother of wages" is neither absolutely and universally, nor even generally true. Vessels may, by the plan of the particular enterprize, sail in ballast for the whole or the greater part of a voyage; so in some cases a single package of merchandize might be taken on freight; and it would be strange to say, that that should be the exclusive pledge of the sailor's right: and it sometimes happens, that the earning of freight is prevented by a blockade, or by the misconduct of the master or owners; and yet, in such cases, wages have been allowed without regard to the fact of freight earned. If the doctrine of the maxim were true, seamen could not be allowed wages out of savings of wreck; and it is now settled, that they are allowed *as wages*, and not as *salvage*. The "safety of the ship," another branch of the maxim, is not essential to the claim of wages; because they are awarded even where the ship has been condemned, if the cargo be restored. The true principle of the seamen's right to wages must be, that they contract to serve to insure the safety of the ship; to bring the *res* safe into the hands of her owners: for which the owners are to pay, if no *vis major* shall occur to take the vessel out of their hands, or break up the voyage; the wages-claim being incident *to the ship and the voyage*, and not to the freight. Where freight is earned, the seamen, the law decides, ought to have their wages: but the *converse* of the rule is not true, as is observed by Lord Stowell in the Neptune, 1 Hag. Adm. Rep. 232. These views are sustained by the following cases: 2 Peters's Adm. Rep. 426. 2 Mason, 319. 3 Mass. 563. 3 Kent's Com. 145. Anthon's N. P 32.

2. The owners are liable for wages, where they or the master or their agents are in fault; either negligently or wilfully, in reference to the ship or the voyage: as where they have deviated from the voyage specified in the seamen's contract; or have been guilty of contraband trade, not in the view of both the parties by the contract, and the vessel is captured and lost; where the seamen are separated by cruelty, or without cause, from the ship; and in all such instances, the seamen earn their wages without regard to the fact of the ship's safety.

Hoyt *vs.* Wildfire, 3 Johns. Rep. 518. 2 Peters's Adm. Rep. 261, 266, 403, 420, 437. 9 Johns. Rep. 138, 227. 1 Peters's Adm. Rep. 51. 1 Mason, 51, 151. 1 Peters's C. C. Rep. 142. 3 Kent. Com. 144. 2 Peters's Adm. Rep. 415. Abbot, 442, 443, 444, 478, 434, 435, 436. 11 Johns. Rep. 56. Bee, 395, 402. The Countess of Harcourt, 1 Hag. 250. 1 Hag. 347. 2 Rob. 216. 2 Gall. 477. 11 Mass. Rep. 545. 3 Mass. Rep. 472. Anthon's N. P. C. 32. And so where a vessel is unseaworthy, at the commencement; and the owners are *only constructively* in fault. Abbot, 447, 450, 457, 2 Peters's Adm. Rep. 266.

And in all these instances, as in the case of sickness and expenses attending it, the seamen receive *damages* in the shape of *wages;* and the claim is treated precisely as a claim for wages. 1 Mason, 51. 2 Mason, 541. 1 Dod. 37. 2 Gall. 164. Abbot, 443, 444. The rule is the same where a voyage is broken up or abandoned before being begun; and damages are recovered as wages. Abbot, 449, 450 (notis). 2 Peters's Adm. Rep. 266. Pothier's Mar. Con. 120, 125.

The ship owners are implicated in the supercargo's conduct, even where they do not own the cargo: because the freighter is answerable over to the owners for the supercargo's acts. Pothier's Mar. Con. 122, sect. 201. Abbot, 280. 3 Mass. Rep. 472. Bee, 369.

3. Where seamen suffer in the service of the vessel, whether separated or not from her; their wages continue, though their actual labour be suspended, and though the vessel in the mean time incur heavy loss from the cause which separates the seamen from the vessel, or occasions their suffering. 1 Peters's Adm. R. 115, 123, 128. 2 Peters's Adm. Rep. 384. 3 Kent's Com. 144, 145. Bee, 135. Beale *vs.* Thompson, 4 East, 546. 1 Dow's Parl. Ca. S. C. 299. 2 Mass. R. 39, 44. 12 Johns. Rep. 324.

The admiralty closely scans the actions of seamen; and even protects them from the consequences of such as are inadvertently made. 3 Kent's Com. 136, 141, 150, 154. 1 Hag. 355, 357. Abbott, 435, 449. 1 Peters's Cond. Rep. 135, 136, 187.

4. The seamen's claim is not in law connected with the contract of affreightment. It suffers no diminution from any de-

lays, or actual loss of profits of the voyage to the ship owners, in freight, or otherwise. 1 Dow, 299. 4 East, 546. 11 Mass. Rep. 545. 14 Mass. Rep. 74. And so little are the seamen in their right to wages, identified with the enterprize, that they do not contribute to general average. 2 Gall. 182. But as their right is connected with the ship, they contribute to the expense of her ransom; and, perhaps, might be bound to contribution, on the same principle, in case of recapture.

The cases of seamen earning wages, where there has been a capture and recapture, or a capture, condemnation, and ultimate restoration of the ship, all show that the seaman is legally interested for his wages in no concern of the *voyage*, except the ship's safety. And, further, it is in these cases settled: 1st. That it is the duty of the seamen to remain with the vessel until the first adjudication, and until the hope of recovery shall thus appear to be gone; and when the vessel is sold and restored, they are paid their wages out of the proceeds, up to the time they so adhere to the vessel. 2d. That where the vessel is condemned, and that sentence reversed, and freight is decreed, or damages in lieu of freight, wages are payable for the time of the actual service of the seamen. 12 Johns. Rep. 324. 2 Gall. 164. Bee, 135. 2 Mason, 161. 1 Mason, 45. 1 Peters's Adm. Rep. 128. 14 Mass. Rep. 72. Abbott, 459 to 463. 2 Brown's Pennsylvania Rep. 335. 3 Kent's Com. 149, 150. 4 East, 546. 1 Dow's Parl. Ca. 299. Further, to show that the seamen's contract is in no wise dependent on the freight, adventure, or interest; the cases may be cited, where their wages have been awarded, though the vessel went in ballast, or in quest of freight, and was disappointed: and where it has been settled that the port of destination is in legal effect the port of delivery, if no cargo be in fact taken thither. 1 Hagg. 233. Abbott, 447, 300. 1 Peters's Adm. Rep. 187, in note. 2 Gall. 175. 2 Mason, 319. 7 Taunt. Rep. 319. And so where vessel and cargo belong to the same persons, no freight actually and literally is earned, and yet wages are due. 3 Kent's Com. 149.

5. The positions stated being sustained, the appellants claim to be paid the full amount of wages from the commencement of the voyage throughout the whole term of imprisonment, and of

absence from the United States. It is contended, that this amount ought to be paid out of the fund now represented in court, without regard to the pretensions of the holders of it, as respects their assignors; or to the fact of all the holders of the means derived from the treaty, not being before the court in this case. The claim pervades the whole, and every part of the fund recovered; and those before the court may recover the proper contributory portion from such as are not parties; as in cases of judgment, binding several pieces of land, and executed entirely upon one: or where, as in Pothier's Mar. Con. 122, sec. 201, the merchant occasions a loss, and the ship owner has to pay the seamen's wages, because of his claim over against the merchant. Abbott, 245. 1 Stark. 490. 2 Serg. and Lowb. 480.

6. The resources of the seamen for the payment of their wages are numerous.

1st. They have the ship as security. Their lien on it is of a peculiar and enduring character: a mortgage created by the law; which places the ship in the owner's hands, as a trustee for the seamen's claim. 2 Dodson, 13. 1 Peters's Adm. Rep. 194, note. Roccus, 91. 1 Hagg. 238. 4 Mass. Rep. 563. Although bottomry liens may be lost by delay, it is not so with the seamen's lien. Abbot, 131. Laches never divests the lien, although staleness may destroy the *claim*. Dorr *vs.* Willard, 3 Mason, 91, 161. The lien is paramount to all bottomry liens. The Sidney, Cave, 2 Dod. 13. Abbott, 131. And even to a claim of forfeiture to the government. The St Jago de Cuba, 9 Wheat. 409.

The result from these and other cases is, that the seamen's lien on the ship is not an ordinary lien like that of a factor, or a mere right to seize or hold; but that they have a quasi proprietary interest, co-extensive with their right of wages; and operating as a judgment, binding lands, controls and appropriates the estate in them to the creditor's benefit.

2d. The seaman has a lien on the freight for his wages. 1 Peters's Adm. Rep. 194, 130. 2 Peters's Adm. Rep. 277. 3 Mason, 163. The master has a lien on the freight for his advances, and for his liabilities to the seamen for their wages. Abbott, 476. 3 Mason, 255.

3d. He has a lien on the cargo to the extent of freight actu-

ally carried, where the owner of the vessel is not the owner of the cargo; or to the extent of what would be a reasonable freight, where the same person is owner of ship and cargo. 1 Gall. 164.

7. We are next to ascertain whether these liens extend in this case to the proceeds of these three several specific securities of the seamen; and can reach those proceeds in the hands of assignees like the appellees who hold the funds in question.

The thing assigned was a mere chose in action, and a claim for that in which the sailor had a clear interest as a *cestui qui trust:* and the object of the assignment was to satisfy antecedent debts not contracted on the faith of the assignment, and for which no release, as a consideration for the assignment, was given.

The owners of the property could assign only an interest commensurate with their right; and only so far as the sailors' lien gave the subject free to the owners, had they any right. The lien of the seaman on the thing is *fixed* and *intrinsic*; and announced by the *law* on the *very face of the thing* to exist: and thus carrying notice of it to all who claim any benefit out of the specific object; as much so as the law regards all assignees of a chose in action as owner of the equities between the original parties to it, and implicated in them. Norton *vs.* Rose, 2 Wash. R. 233.

A *bona fide* purchaser, without notice, takes the thing clear of all latent equities. 2 Johns. C. R. 443. Redfern *vs.* Ferrier, 1 Dow. Parl. Ca. 40. But a seaman's lien is not a latent equity.

To show that a lien which is intrinsic, is a *legal right*, and not a mere transient and accidental equity, and is not to be extinguished by assignment, the following cases were cited: 3 Meriv. 85, 99, 104, 106. Mann *vs.* Shifner, 2 East. R. 523. United States *vs.* Sturges, 1 Paine's C. C. R. 535; and also, Abbott, 245 (in notes). Cited also, The Flora, 1 Hagg. 298; The St Jago de Cuba, 9 Wheat. 409.

No actual notice to the assignees then was necessary; the notification of the seamen's lien being furnished by the subject itself. The claim assigned being the effective proceeds of that to which the lien adhered, notice was imparted from the very source of the assignees' title; and it was by law, and

so, necessarily known to them, because published by the law as a legal right to the whole world, that the claim could not be prosecuted for the *exclusive* use of the owners of the ship.

There was, however, notice here to the assignees in fact, by the history of the claim, which is connected with its title: and it was like the case, where the tracing of the title may carry the party to the view of a particular right or circumstance; of which the law then imputes notice to him. There was, at least, enough in the *events* on which the claim arose to put the party on inquiry, and so to affect him with notice. 1 Johns. C. R. 302. 8 Johns. C. R. 345. 5 Johns. C. R. 427. 7 Cranch, 507, 509. There was too a *lis pendens*, to give notice of the seamen's pretensions; the suit of the seamen against the owners at the period of the assignments. 1 Johns. C. R. 566. 3 Mason, 187. 2 Rand. R. 93. Cited also, 3 Kent's Com. 175. Abbott, 244, 245. Campbell *vs.* Thompson, 1 Stark. Rep. 590. Roccus, note xci. 1 Dod. 31. 2 Dod. 13. 2 Gall. 330. 4 Cranch, 332. 2 Brown's L. 143.

Having thus identified the assignees with the owners, it is to be seen whether there is any thing in the nature of the seamen's present claim, or of the fund in question, which prevents a lien arising, or has intercepted that lien. It may be premised, that the means from which satisfaction is sought, if referred to the royal act, may be regarded as flowing rather from an act of state, than a judicial decision. The legal nature of the fund is not varied by this circumstance, as concerns the sailors' rights. Beale *vs.* Thompson, 4 East, 561.

8. It cannot be said, that looking to the fund in question, the appellants are endeavouring to get the benefit of a matter of damages to which the lien of the seamen cannot attach, or a mere matter of indemnification collateral entirely to the *res*.

Whenever the specific thing is not restored, the *satisfaction*, technically speaking, is regarded as damages; but there is no reason why the *moneys* which afford that satisfaction may not be regarded as the effective substitute of the thing. Manro *vs.* Almeida, 10 Wheat. 473. In case of reversal of condemnation of property, and an intermediate sale, the restitution of the proceeds of sale is virtually only a satisfaction in damages, and is so considered; damages being contradistinguished from the *specific thing*. Willard *vs.* Dorr, 3

Mason, 164. So it is said in 1 Peters, 130, that wages shall be allowed in the case there put, "if freight be awarded, or *damages in lieu* of it."

There is nothing, therefore, in the mere term of damages, so vague and transitory, that they can be identified in law to nothing specific. Beside, if there be but damages in question, they are fixed and liquidated by the royal order of Spain, in 1815, before the assignment; and in that award we held a vested interest, although it be even admitted that only a claim was by it established. The commissioners under the treaty with Spain, merely executed the royal order: affording only the satisfaction which under that order the officers of Spain should have afforded. There was a sufficient grievance for the redress of the commissioners, in the fact that Spain had by the royal order directed the satisfaction, and that the authorities had not obeyed the direction. The merits of the case, antecedent to the royal order, need not have been presented to the commissioners. The order, and the commissioners in their award, speak too only of a restitution of "proceeds;" so that the appellants have the benefit of that phrase for the moneys we claim, if there be any force in it. The commissioners awarded what the King of Spain had directed to be done, and because it had been so directed. Our interest in the case, therefore, relates back to the date of the royal order; overreaching the assignments.

It may be said, that this is an attempt to follow a matter of damages, as would be the case of a seaman claiming wages out of a recovery upon an insurance of a vessel, when she has been totally lost; or out of a recovery of damages for a collision, when by that circumstance a vessel has been lost. In both such cases it is admitted as a general rule, that the seaman would be entitled to no satisfaction. 2 Peters's Adm. R. 276. 11 Johns. R. 279. Abbott, 257, 457. 18 Johns. R. 257.

The difficulty in the way of the seaman, in either of the supposed analogous cases is not that the fund recovered cannot be considered as the *substitute* of the *res;* but only that the seaman has no *claim* against the owner, for which either the res, or the fund, can be a collateral resource: for in every case of a total loss of the res, if the equivalent res be made liable, it is only under a charge or lien that must be *incidental* to a *per-*

sonal right; a claim against the owner. Supposing, therefore, the perfect innocence of the owner respecting the loss of the vessel in the two cases; it would appear that the very event which puts an end to the seamen's *claim*, gives rise to a collateral demand of the owners. Could the success of the owners in that demand revive the already extinct *claim* of the seamen? Can *a lien* exist, unless to support and effectuate *a claim*? Is not in the cases supposed the right or complaint of the owner founded on the reason that he has been prevented from attaining that benefit, which, *after deduction of expenses*, including of course seamen's wages, would have resulted to him from the voyage? The claim of the seamen *being gone*, by the fact of the disaster; the recovery can have no respect to it as an incumbent burden on the owners. What then is the portion of the recovery that answers to the seamen's wages?

In the case of the insurance recovery, it was further observed that, to make the seamen's wages good out of the fund recovered, would (where the claim of the seamen is supposed to be gone) be allowing the seamen in effect to insure their wages;—which is not permitted.

In 3 Mass. R. 443, a satisfaction of a claim, as that here in question, under a treaty is regarded as salvage. Courts of admiralty are courts of equity, in reference to all rule of interpretation, and as regards all constructions. They decide ex æquo et bono; and require but certainty to guide them, and substance to rest upon. Abbott, 435. 3 Mason, 16, 17, 263. Abbott, 435. And all these elements are here found, to connect the fund in question with the original res.

9. It may be said that viewing the fund here as proceeds, it has lost the legal qualities of the specific thing; that it is turned into mere *currency;* and not specifically liable any more than would be the *general means* of the owners.

It is a well established rule of common law and equity, that the proceeds or pecuniary result of the thing is regarded as the representative of the thing; as the thing itself: and that money may be specifically appropriated, and bound, if it can be traced, and, *as a fund*, identified. And such is the principle too of admiralty. 1 Johns. C. R. 119. 2 Johns. C. R. 444. 4 Johns. C. R. 136. 7 Johns. C. R. 52. 6 Johns. C.

R. 360. 2 East, 523. D'Wolf *vs.* Harris, 4 Mason, 515. Smart *vs.* Wolf, 3 Term Rep. 323. Park, 53. Jacobson's Sea Laws, 276. Hunter *vs.* Prinsep, 10 East, 378. 1 Day, 193. 4 Rob. Ad. Rep. 302, 314, 347. 2 Rob. Ad. R. 343. Cowp. Rep. 251, 271. 15 Mass. 408. 1 Barr. R. 489. 6 Price's Ex. Rep. 309. Camp. N. P. C. 251. 3 Bos. and Pull. 449. 5 Barn. and Ald. 27. 1 P. W. 737. 1 Atk. 94, 102, 232. 2 Vern. 566. Co. Bank. Law, 556. 1 T. R. 26, 747. 3 Mason, 238. 1 Mason, 99. United States *vs.* Peters, 5 Cranch, 115, 2 Peters's Cond. Rep. 202.

Assuming that, in point of law, the assignees *stand identified* with the owners, in reference to the fund, which the appellants heretofore endeavoured to establish; it is clear that the fund is affected by the lien of our demand, as the *res*, from which it springs, would be.

10. It may be said, however, that whatever may be the principle as to the *lien* on the proceeds, yet that the admiralty cannot carry its *jurisdiction* to the proceeds which have been produced on land, and by distinct operations there; and that the lien or specific claim can only be effectuated in a court of equity. It is difficult to see what greater advantages that court could afford to any of the parties, especially since an admiralty court, as has been shown, acts as a court of equity; and where a court of admiralty has possession of a marine subject, as a marine claim or the res involved in it, it will, by *its incidental jurisdiction*, go on as a court of equity to distribute a fund among claimants; over whose commands it could pretend to no original jurisdiction. The Packet, 3 Mason, 263. 4 Mason, 386, 387. 1 Hagg. 356, 357. The assignees are here amenable to this jurisdiction, as the possessors of the fund, as which they are liable equally with the fund itself. 1 Gall. 75. 1 Show. 177. 3 T. R. 332. 10 Wheat. 497. 1 Mason, 99. 7 Ves. Jun. 593. 10 Wheat. 473. The fund, as the result of the thing, is like the thing, subject to the admiralty jurisdiction. This grows out of the powers of incidental judicature, belonging to a court of admiralty. This incidental power necessarily attaches to all jurisdictions. As regards the admiralty, it is not confined to *prize* jurisdiction. 2 Peters's Cond. Rep. 2 (note). 2 Wheat. App. 2. 2 Brown's Ad. 101. 8 Cranch, 138.

[Sheppard and others vs. Taylor and others.]

It once being admitted that the fund is in law liable for the claim, it is clear from the authorities, that the admiralty must have jurisdiction to apply those means; since it is established, that if the original *claim* be within the admiralty cognizance, all that is necessary *to enforce or satisfy* that claim, whether as respects persons or property, is within the jurisdiction; and that without regard to locality. 3 T. R. 333, 344. 1 Peters's Adm. Rep. 126, 232. 2 Peters's Adm. Rep. 309, 324. Abbott, 483. 4 Cranch, 431. 2 Gall. 435, 436, 446, 462. 1 Vent. 173, 308. Hardr. 473. 1 Lord Ray. 22, 271. 2 Lord Ray. 1044, 1285. 12 Mod. 16. 2 Lev. 25. Cro. Elizab. 685. Rolle's Abr. 533. 12 Co. 97. 1 Lev. 243. 3 T. R. 207. Bee, 99, 370, 404. Carth. 499. 2 Mason, 541. 3 Mason, 255. 4 Mason, 380. 1 Mason, 99. 1 Hagg. 298. 9 Wheat. R. 409. 2 Price's Ex. R. 125. 10 Wheat. 497. 7 Ves. Jun. 593. 2 Str. 761. 3 Mass. R. 161

11. It may be objected, however, that the royal act in the case is a judicial declaration of the innocence of the owners, and cannot be averred against by these libellants; but is conclusive against their present claim, which is founded on the idea of the breach of contract by the owners; a conclusion directly the reverse of the royal decision: and, secondly that the libellants cannot contradict that decision, because they seek the benefit of a fund which flows from it, and of a retribution which could have been awarded only to owners free of the delinquency charged in the libel.

On these objections it may be observed, that the act of the king of Spain, according to its purport, may fairly be deemed only a bounty prescribed for prudential reasons, and prompted by motives of state, under the fancied power of reprisals threatened; as the royal missive says, to be exercised by the senate of Maryland. It professes not to be an examination of the facts of the case, nor to know any thing of the confiscation that had taken place in Chili; and declares, in effect, that the proceeding in the cause was, at the time of the royal award, before the council of the Indies, in the regular order of judicial investigation.

It is contended, on the other side, that the royal decree is a judicial decree, and *in rem*, and like a prize court decree, and in its conclusive scope embracing all the world. Admit-

ting that it is a judicial decree, and that the king sat as prize-judge in pronouncing it; it will still be inoperative as against us, when all the principles are taken into view which regulate the effect of such decrees. It is a general principle, that judgments are binding only on those who are parties to them: and it is said by justice Washington in 4 Cranch, 434, that the conclusiveness of foreign sentences was not to be enforced as a departure from that general principle; but that that, as understood and applied, was only a sequel of that very principle. The sailors were not parties to this supposed decree of Spain, actually; and they were not so constructively; if the views presented by us be correct, as to the distinctness of the claim involved in the Spanish cause, and that now in question. In prize sentences, and in exchequer decrees, all are supposed to be parties who have a legal interest in *the questions* directly in the cause; and all such are allowed to intervene, and are therefore regarded as actually parties; whether they avail themselves of their privileges, or forbear to do so. Hardr. 194. 2 W. Black. 977. 5 T. R. 255. 13 John. 561. 3 Wheat. 246, 315. The Apollon, 9 Wheat. 362. 2 Evans's Pothier, 350 to 354. Hence the conclusiveness of these judicial acts; and such is the standard and limit of their operation; extensive as it is, but not unbounded. This is the position, in effect, of chief justice Marshall, in 9 Cranch, 126. No one is bound by a judgment who was not actually a party to it, *or might have made himself so*, is the principle of common law, as to judgments generally; and, we see, is not deviated from in the case of the sentences and decrees now in question. 2 Stark. 191. So at common law, no judgment is conclusive beyond the point decided. 2 Bac. Abr. 630. 1 Paine's C. C. R. 552. So a prize sentence or a decree of an ecclesiastical court, is conclusive against all legally concerned in the point of the decree, only as to the fact *concluded*, on which the decree is founded; and only as regards the *direct operation* of the decree or sentence. 2 Evans's Pothier, 355, 356. 8 T. R. 192.

The result of the decisions then is, that in fixing the conclusive operation of these sentences regard must be had to the particular right in question; and the sentence is evidence of the fact on which it rests, only so far as the fact bears any re-

lation to that *right*. Hence, these positions have been determined:

1st. That nothing *collateral* is to be inferred from these sentences. 1 Salk. 290. 11 St. Tr. 261. 2 Stark. 234.

2d. That nothing is considered as established by them, except that without which they could not have been pronounced; that is, the points of right; and the points of fact, as related to the questions of the right specially under adjudication. 3 Cranch, 488. 4 Cranch, 2. Jennings *vs.* Carson, 2 Peters's Cond. Rep. 2. The Mary, 9 Cranch, 126. Sims, administrator *vs.* Slacum, 3 Cranch's R. 300. Ammidon *vs.* Smith, 1 Wheat. 447.

3d. That courts, when a sentence of this kind is invoked, will examine into all the facts on which it is founded; except only that *concluded point* of fact, perhaps, which is the *direct* and *essential* basis of the sentence. 4 Cranch, 185. 6 Cranch, 29.

These positions seem to follow from the principles of justice that should regulate judgments; and without them there would, in the efficacy of foreign sentences, be a departure from the fair rule of law that judgments shall bind only parties; and Mr Justice Washington's remark, already referred to, as to the force of these sentences, would not be sustained.

If the act of the king of Spain does not conclude the rights of the appellants, it cannot be pretended that such can be the effect of the award of the commissioners under the Florida treaty. That award, we have endeavoured to show, was nothing more than the execution of the royal order; or rather was founded on the conclusiveness of that royal order, as a testimonial of the right of the owners to redress at the hands of Spain. And the disobedience of the Spanish authorities was, of itself, a grievance, in behalf of which the commissioners would interpose; without looking into the circumstances of the owners' case as that stood when under judgment before the king of Spain. Consequently, the award and the royal order are to every effect identified; and are as much so as the judgment of the appellate tribunal is identified with that of the original. A reference to the report of the commissioners of their proceedings, which was made at the close of the commission, will support these views; as to the light in which they regarded the

acts of the government, or of the judicial authorities of Spain in the particular cases.

With regard, however, to the effect of these awards, this court has already determined, that the equities of none shall be precluded by them, whose pretensions have not been actually and directly passed upon by the awards. Comegys *vs.* Vasse, 1 Peters, 212, 213.

It is said, finally, that any recovery of the libellants in this cause must be limited to the amount of freight of the voyage; and to that amount as adjusted by the award of the commissioners. As regards the effect of that adjustment, having shown that our claim is not under the royal act, or under the award, it can be subject to no limitation by virtue of either. The freight awarded, if it is supposed to have included in its estimate the claim of seamens' wages, cannot be understood to have considered the enhanced wages, nor the claim for the long confinement in prison, and the whole period of suspension of our labours; which, though regarded as wages in admiralty, are intrinsically damages. The award, as concerns the freight, cannot be considered, then, as involving an ascertainment of the amount of our claim; and the freight fund is not consequently to be regarded, as our opponents' proposition would view it, a trust fund, of which only a part belongs to us; and that part regulated by the proportion which our wages might bear to the whole expenses of the voyage. On the other hand, there is no principle which would make even the full amount of the freight the limit of our recovery. If the owners had been perfectly innocent, and our claim were not founded, for almost the whole amount, on their wrong; there might be reason for saying, that our recovery should diminish in proportion to the deficiency of freight awarded to the owners; as might, in such a case, be inferred to be the proper rule, from 3 Mason, 163. But, even in such a case, there would be nothing to exonerate the ship from the charge; which by all is admitted, to be subject to the lien. Freight, as clearly, we think, is subject to this lien; and we hold that at least freight and ship are here chargeable: but that under the decision of judge Ware, and the positive authorities to which he refers, the cargo also is liable to the extent of a reasonable freight. The evidence in this cause shows that the fair freight

on such a voyage as the Warren's, would vastly have exceeded the amount granted by the commissioners. If their award be not binding against our rights, as we have endeavoured to show, why should their estimate of the freight supersede all the evidence adduced to show its proper amount? If the owners of the ship had not owned the cargo, and a freight had been actually charged on it; our pretensions could not have transcended the value of the ship and of the freight, as charged: but, ship and cargo belonging to the same persons, the freight is but a speculative item; and the amount is to be determined by evidence such as we have adduced, and on the supposition of the ship owners not owning the cargo. The proceeds of the cargo, it is always to be presumed, will pay all the freight and expenses attending it. Whatever sum, therefore, the commissioners have failed to allow less than the fair charge of freight, is to be considered as part of the proceeds of cargo allowed for. To the extent of that reasonable freight, therefore, we should be permitted to be satisfied out of the freight awarded, and out of the proceeds of cargo allowed.

Unconnected as the mariner's contract has been shown to be with the contract of affreightment, it seems strange that our claim is to be commensurate only with the amount of freight; and that, too, awarded by a tribunal whose act is in no wise conclusive, to any extent, against us, as regards the merits of our claim.

Mr Taney and Mr Wirt for the assignees, appellees, stated: that the assignees, for whom alone they appeared, were not interested in controverting the allegations of the illegality of the Warren's voyage, or the fraud charged to have been practised upon the libellants by the owners; and those points of fact would, therefore, not be contested; but, as concern the assignees, may be deemed to be conceded. And the only points of law which would be controverted among those presented in the statement of the appellants, are those which are involved in the following propositions, on which alone they should insist:

1. That the fund received by the assignees under the award of the commissioners, as stated in the record, is not liable, in their hands, for the wages claimed, or any part of them.

2. If the fund in the hands of the assignees be liable for the wages or any part of them; the admiralty court, in its character of an instance court, has not jurisdiction to compel payment.

3. If the fund in the hands of the assignees be liable, and the court of admiralty have jurisdiction to enforce it, the libellants are entitled to recover only such proportion of the sum awarded for freight, as was given as a compensation for wages.

The claim originally presented in this case was against the owners personally. It was founded on no idea of a lien. It asserted no right against the ship, that having been condemned and the lien gone; nor did it assume that any freight had been or would be earned, or that any restitution would or might be made by Spain. The pretension of the claimants had no reference to any restoration by Spain, until after the treaty was, in 1819, entered into with Spain. The assignments to the appellees (who alone are here represented) were made in 1819, 1820, and 1821. They are absolute; without any reservation for the seamen's claims. The libel alleges no notice to the assignees of these claims; and no contract between the assignees and sailors is pretended to exist. The original proceedings pursue a *personal* remedy; and the amended libel purposes to enforce the claim against a fund, under an asserted lien which is to overreach the assignments. These claims are at war with each other; the latter cannot be an incident to the former.

1. The fund in question accrues under that section of the treaty with Spain (the Florida treaty, sect. 9), which establishes indemnification for unlawful seizures; the United States being bound, by the eleventh section, to pay the compensation. Thus Spain owed as a debt to our citizens; and she placed funds in the hands of the United States to pay it: thus making the latter trustees for the claims of a particular description; for claims, among others, arising from *unlawful seizures*. The commissioners of claims under the treaty have decided the seizure in this case to be unlawful; but, admitting the inquiry to be yet open, and that this court should decide the seizure in Chili to have been lawful; what claim would the seamen have to this fund which was to pay debts of which seamen's wages was not one.

These seamen had no claim on Spain; and the fund which the treaty furnished belongs only to persons who had claims against her; and a decision that the voyage was illegal, or that the royal decree was obtained by fraud, would create no right for the seamen. Nor would they derive any claim from the royal decree, if considered as an act of munificence. But the only ground on which their claim can colourably be set up, is the illegality of the seizure, and that there has been no change of property; all which is contradictory to the principle on which the fund has been awarded, and which must determine its distribution. Upon the cases in 1 Bos. and Pull. 3, 296, and 5 Term Rep. 562, cited in answer to these views, it is to be observed, that there the fund was admitted to have been received for the benefit of the plaintiffs; and therefore the court would not allow the inquiry into the illegal source of it.

If the fund be the result of fraud in imposing on the king of Spain, this court will not touch it. If thus produced, it does not belong to any of the parties now before the court, but should have been distributed among the other claimants under the treaty; the treaty not having furnished a full indemnification.

It is immaterial whether the seamen were concerned or not in the fraud, so far as respects the present question; but the case shows that they were induced to abstain from appearing before the commissioners in opposition to the assignees. If the fund was the product of fraud, it does not represent the *res ipsa;* nor is it a case, as presented, where there could be a *spes recuperandi*, if the voyage was unlawful and the capture legal.

All this might be open to inquiry, if the proceedings were against the owners. The award of the commissioners is, however, conclusive, and we cannot go behind it. Comegys *vs.* Vasse, 1 Peters, 193. The libel in 1810, against the owners, in *personam*, was proper; and cannot assume a different shape when the fund comes into existence. The ship being gone, and the lien with it, the claim should continue in *personam*, if it may be prosecuted against the owners. We, however, defend only the fund; and need not inquire how far the owners may be personally liable. The claim now pursued cannot be a lien on the debt, unless the debt was due to the owners; and, ac-

cording to the case as exhibited by the complainants, nothing was due to the owners. 1 Peters, 212.

In this view of the subject, the demand of the seamen can avail, at all events, only against such proportion of the commissioners' allowance for freight, as included wages; and the amount of that would be small. 1 Peters's Adm. Rep. 130. 3 Mason, 166. The amount to be recovered would be very different from that which in a suit against the owners would be allowed, where the voyage was lost by the fraud of the owners, and the sufferings of the seamen were imputable to them. 3 Kent's Com. 145, 146, 149. But the imposition practised upon the seamen by the owners, gave them no claim against the Spanish government. The innocency of their intentions might excuse them from punishment, but could not entitle them to reward.

If the seizure were deemed unlawful, and a restoration made, the owners, but not the fund restored, would be liable for all wages; because, with the condemnation of the res, the wages are lost and gone. The restoration of a sum as freight might reattach the lien to the money, if received by or under control of the owners; but not to the money if owned by assignees. 1 Peters's Adm. Rep. 130, 186, note. 3 Mason, 91, 92, 95. 3 Kent, 149.

In reference to the freight, or damages in its place, the right to wages springs into existence at the moment when the money comes into the hands of the owners. If the owners are free from blame, and they receive the freight-fund, they are liable for the wages only upon the equity of their contract; and although the wages-claim may depend on the contingency of receiving freight, yet it is not a lien on the fund, but rests exclusively in contract, and on the *personal liability* of the owners.

There was no lien for the wages on this fund. On the ship it existed; and, until a lawful condemnation, might have been pursued: but there was no lien on the claim against the foreign government; and none attaching to that debt, the proceeds of the debt could not be subject to it. If the debt be due at all, it is so from the moment of the unlawful condemnation and sale. How can the demand be a lien on the money received from the debt, if not a lien on the debt itself? Suppose the

owners to be solvent in this case: the owners becoming liable as soon as they had received the money, would there at the same time be a lien on the fund in the hands of the assignees?

The true principle would seem to be, that on restitution and allowance of freight, the owner is personally liable on his contract to the seamen; but the ship being gone, there can be no lien on it. It is so treated in 3 Mason, 91, 92, 95. 2 Mass. R. 39, 44. 2 Dods. 13. Abbott, 247, 476. 1 Barn. and Ald. 575. All liens are attached to the thing, or to what is placed as its substitute in the hands of the court, and through the act of the court; but not to what is the result or proceeds of the thing after many mutations. If a ship, liable to a lien for wages, were exchanged for another, the lien would not become attached to the ship received in exchange, nor upon any other specific substitute for the ship. Thus in Brooks *vs.* Dorr, 2 Mass. R. 39, 44, the underwriters, on abandonment, had taken the ship, but they were not held answerable for the wages. So owners receiving freight from underwriters are not on that account liable for wages. The assignees here stand precisely on the ground with underwriters after abandonment. 3 Kent, 153. 1 Peters's Adm. Rep. 213, 214. 3 Mass. R. 563.

The claim of the seamen, being in suspense, could not be a lien. Suppose the fund in question had been paid to the agent of the owners, and he had remitted, and they had drawn for it; would the claim have been a lien on the demand in the hands of the payee; nay, of every indorser who had notice? Or suppose the owners, after wages earned, sell the ship, will they be a lien on the debt due from the purchaser? Or suppose the owners had received the fund here and paid it to the assignees, they having notice; could it be followed by the seamen in the hands of the assignees? Or suppose a mortgagor of personal property sells it, and receives a note for it, which he assigns; or that he assigns the claim against the purchaser, and that the property perishes; can the debt be followed by the lien in the hands of the assignee?

Through how many changes is this lien to follow? 1. The ship; 2. The money in the Chilian treasury; 3. The debt from the Spanish government; 4. The Florida lands; 5. The money paid for those lands.

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It is said that the assignee of a claim takes it subject to all equities. This is true as between debtor and creditor; and, so far as there is any equity of Spain, the debtor, the assignees take it subject to it; because of Spain they can inquire: but not so as to a third person. It is to be proved, that the debt due from the king of Spain was incumbered with this claim of seamen's wages.

The assignees had no notice of this claim. The libel does not charge it, and the answers deny it. A lis pendens is notice, but only of the particular claim in the suit; and that here was a claim against the owners, personally; not upon the foundation of a demand against the *spes recuperandi.* It was, therefore, not notice of a claim against the fund, but rather a *disclaimer* of such pretension. The royal order was in 1815, and yet the libel of the seamen continued *in personam,* and was for a personal injury under the charge of fraud and imposition. If the seamen had appeared before the commissioners, they could not have decreed any thing for them, for they had no claim on the Spanish government. They certainly are not entitled on the ground that they concealed, what if disclosed, as they seem to allege, would have defeated the recovery of the assignees before the commissioners. But the order of the commissioners must speak for itself: and that awards the fund to the assignees, and on the ground of the unlawfulness of the seizure; which contradicts and repels the basis and merits of the present demand against the fund.

2. If the fund be liable to this claim, the assignees are to be considered as receiving it as trustees; and if they be trustees, a court of admiralty has no jurisdiction in this case. 1 Peters's Adm. Rep. 212, 213, 214, 215. 8 Johns. Rep. 237. 1 Ves. Sen. 98. 3 Mass. Rep. 464. 5 Rob. Adm. Rep. 155, 158, 160. The obligation to pay here, if it exist, must arise from a contract implied by courts of common law and of equity; and this contract cannot be the foundation of proceedings in the instance court. The only ground of claim on which the appellants rely is the supposed lien. But it must be remembered, that the present is a proceeding *in rem,* and not *in personam;* and the question of lien is not identical with that of jurisdiction, which last is the antecedent inquiry: a jurisdic-

tion once established over the *res*, the court then, but not until then, exercises incidental powers; and may over such an admitted subject of jurisdiction, act upon the principles of a court of equity. But the *res* must be in possession of the instance court to attach the jurisdiction, and that *res* to which the lien was fastened. 4 Cranch, 23. 1 Paine, 620. 1 Gall. 75.

The case is not to be likened to that of a prize court's jurisdiction, for that jurisdiction is *exclusive*, and no other court *can* try the questions. And in prize courts, therefore, the proceeds are followed, not by reason of any supposed *lien*, but because the question of prize or no prize is involved in the controversy. Doug. 594, 613, note. 3 T. R. 323. 6 Taunt. 439. 2 Brown's Adm. L. 217, 218, 219. 1 Dall. 218. 1 Bay, 470. 16 Johns. Rep. 327. No aid can, therefore, be borrowed from the decisions in prize causes: a prize court following the proceeds, not on the ground of *lien*, but of *exclusive jurisdiction*. But where is this jurisdiction to end? In the cases of prize, when the rights of parties, immediately springing from the capture, are settled, the jurisdiction ceases; but not so with this doctrine of lien on the proceeds of the *res ipsa*, which would make the jurisdiction, it would seem, interminable. The ship is sold for goods; the goods are converted into money; the money is invested in land; yet it is still *proceeds* subject to the *lien*, and liable to be followed by the admiralty court, and subject to its jurisdiction. And under the authority of 1 Paine's C. C. Rep. 180, it is said too, that notice is not necessary to charge the bona fide purchaser, in the pursuit of these proceeds.

3. So far as this fund is concerned, it is conclusively settled that the seizure was unlawful and the owners not in fault; and the voyage not having been performed, it is only the recovery and receipt of the freight which gives the right to wages, and furnishes the fund for paying them. The entire freight was not allowed by the commissioners. The full amount due as claimed, and proved, was forty thousand dollars; and the amount allowed was only thirteen thousand eight hundred and sixty dollars. As freight then, for the whole voyage, was not allowed; the seamen are entitled to wages *pro rata* only. 3 Masen, 166. 3 Kent's Com. 149. 1 Peters's Adm. Rep. 186, Judge Winchester's Opinion. 10 Mass. Rep. 143.

It does not appear for what part of the voyage freight was allowed. The just rule in this case then, as laid down in 3 Kent's Com. 149, would seem to be, to regulate the amount of wages by the amount of freight recovered; that is, to apportion it between the owners and the seamen. In reference to the present questions as to the fund, the owners in distributing the fund are to be regarded as innocent sufferers, and share in the freight. By the royal order, they were entitled to three hundred thousand dollars; but the commissioners' award gave them (subject to the deduction of one-twelfth) only one hundred and sixty-nine thousand one hundred and fifty dollars, and ninety-eight cents. Two months wages had been advanced to the seamen at the beginning of the voyage. The amount of freight awarded, was not in the control of the owners. If no freight had been awarded, the seamen, according to our present views, would have become entitled to no wages. To make the amount of wages then more than proportional to the amount of freight recovered, would be to punish the owners for not abandoning all claim for freight.

The wages cannot be recovered for a period beyond the time of capture, making a term of five months; from which must be deducted two months, the wages for that time being paid in advance.

This view is founded on the conclusive nature of the award.

Mr Justice STORY delivered the opinion of the Court.

This is an appeal from a pro forma decree of the circuit court of the district of Maryland, in a case in admiralty, for mariners' wages. The original libel (which was filed in December 1810) was against the owners in *personam;* alleging among other things, that the libellants (six in number) shipped on bound the Warren in August 1806, to perform a voyage from Baltimore to the northwest coast, thence to Canton in the East Indies, and thence back again to Baltimore; that they proceeded on the voyage; but that with the privity and consent of the owners the ship deviated, without any justifiable cause, from the voyage, and arrived at Conception Bay on the coast of Chili, for the purpose of carrying on an illicit trade against the colonial laws of Spain; that the vessel was there

seized by the Spanish authorities, and finally decreed to be forfeited; the crew were taken on shore and held for a great length of time in imprisonment; and afterwards, having effected their escape, arrived in the United States in 1810. The owners appeared and made a defensive answer; which was excepted to, and afterwards amended. Some testimony was taken; but no further proceedings appear to have been had until October 1818, when an amended libel was filed by the libellants and others (in all fifty-seven persons); and in June 1819 another amended libel by another of the seamen. The only allegation in these supplements which it is material to mention is, that the owners had received the whole or a part of the proceeds of the ship and cargo. At a later period in the year 1819, all the owners became insolvent. In December 1819, Lemuel Taylor (one of the owners) assigned to Robert Oliver all his interest in the proceeds of the Warren and cargo, whenever recovered; in November 1820, Smith and Buchanan (two other owners) assigned, among other things, all their interest in the proceeds of the ship and cargo to Jonathan Meredith and Thomas Ellicott, in trust for the Bank of the United States and other creditors; and in May 1821, Hollins and M'Blair, the other owners, assigned all their interest in the proceeds of the ship and cargo to the Union Bank: all these assignments were made to secure debts antecedently due. Long before these assignments, to wit in June 1815, the owners had procured from the king of Spain a royal order for the restitution of the ship and cargo. But no restitution having been in fact made, the assignees laid their claim before the commissioners appointed under the treaty with Spain of 1819, commonly called the Florida treaty; and the commissioners in 1824 awarded them compensation as follows: for the ship Warren twenty-five thousand dollars; for the cargo, one hundred and twenty-five thousand one hundred and thirty-one dollars and ninety-three cents; and for the freight thirteen thousand eight hundred and sixty dollars. This amount was accordingly paid to them by the United States. In December 1825, the libellants filed a new libel by way of petition against the owners, and against their assignees, setting forth their grievances in a more aggravated form; and alleging the award and receipt of the proceeds

by the assignees, and the promises of the owners to indemnify and pay them out of the proceeds, whenever recovered, to the full amount of their wages; and accounting for their not having proceeded to a decree in personam, against the owners; except so far as to have a docket entry, in June 1822, of a "decree on terms to be filed" (which was afterwards rescinded), solely upon the faith of those promises; and praying process against the owners, and also against the assignees, to pay them the amount out of the proceeds in their hands. Answers were duly filed by the owners and the assignees; the former asserting that they had parted with all their interest in the funds; and the latter asserting their exclusive title to the same under the assignments, and denying any knowledge of any agreement of the owners in respect to the claim of wages, or of the other matters stated in the petition.

Further testimony was taken; and finally, by consent of the parties at May term 1828, a decree pro forma passed, affirming the decree of the district court, dismissing the libels and petition exhibited in the cause: from which decree the case now stands upon appeal before this court.

Such is a very brief statement of the principal proceedings in this protracted suit: in its duration almost unparalleled in the annals of the admiralty; whose anxious desire and boasted prerogative it is to administer justice, as the metaphor is, velis levatis. A great portion of the delay (which would otherwise seem a reproach to our law), can be attributed to no other cause than the voluntary acquiescence of all the parties, under the peculiar circumstances growing out of new emergencies in its progress.

The cause has been most elaborately and learnedly argued at the bar, upon a variety of points suggested by the different postures of the case. The view, however, taken by us of the merits, renders it wholly unnecessary for us to go into any examination of many of these points; and this opinion will be accordingly confined to those only which are indispensable to a decision; and which, we trust, after such a lapse of time will prove a final decision.

The first question is, whether in point of fact the libellants have substantially sustained the allegations in the libels and

petition in respect to the voyage; to their ignorance of the intended illicit trade; to the seizure of the ship and to their own imprisonment and separation from it: which are necessary to maintain their claim for wages. And we are of opinion that the evidence upon these points is conclusive. Without going into the particulars, it may be said that few cases could be presented under circumstances of more aggravation; and in which the proofs were more clear, that the seamen were the victims of an illicit voyage, for which they never intended to contract, and in which they had no voluntary participation.

Such then being the state of the facts, the law upon the subject is very clear. It is, that the seamen are entitled to full wages from the time of their shipping on the voyage, to the time of their return to the United States; deducting their advance wages, and whatever they have earned (if any) in any intermediate employment. This is the general rule in courts of admiralty in cases of this nature; where the libel seeks nothing beyond compensation in the nature of wages. To this extent the seamen a e entitled to a decree against the owners. But they being insolvent, it becomes necessary to inquire whether they have not also a remedy against the assignees holding the proceeds of the ship, cargo, and freight in their hands.

If the ship had been specifically restored, there is no doubt that the seamen might have proceeded against it in the admiralty in a suit, in rem, for the whole compensation due to them. They have by the maritime law an indisputable lien to this extent. This lien is so sacred and indelible, that it has, on more than one occasion, been expressively said, that it adheres to the last plank of the ship. 1 Peters's Adm. Rep. note, 186, 195. 2 Dodson's Rep. 13. The Neptune, 1 Hagg. Adm. Rep. 227, 239.

And, in our opinion, there is no difference between the case of a restitution in specie of the ship itself, and a restitution in value. The lien reattaches to the thing and to whatever is substituted for it. This is no peculiar principle of the admiralty. It is found incorporated into the doctrines of courts of common law and equity. The owner and the lien holder, whose claims have been wrongfully displaced, may follow the proceeds wherever they can distinctly trace them. In respect,

therefore, to the proceeds of the ship, we have no difficulty in affirming that the lien in this case attaches to them.

In respect to the freight, there is more room for argument. That there is an intimate connexion between the freight and the wages; that the right to the one is generally, though not universally, dependent upon the other; is doctrine familiar to all those who are conversant with maritime law: and has given rise to the quaint expression, that freight is the mother of wages. Indeed, freight being the earnings of the ship in the course of the voyage, it is the natural fund out of which the wages are contemplated to be paid; for though the ship is bound by the lien of wages, the freight is relied on as the fund to discharge it, and is also relied on by the master to discharge his personal responsibility. We think, then, that this relation between the freight and wages does, by the principles of the maritime law, create a claim or privilege in favour of the seamen, to proceed against it under the circumstances of the present case.

Here, the owner of the ship is also owner of the cargo. There has been an award allowing the assignees freight, as a distinct item; and the owners are insolvent. If the master of the ship were living, he would have a direct lien upon the freight for his disbursements, and liability for wages; and through him the seamen would have the means of asserting a claim on it. We can perceive no principle then, why, in the present case, the seamen may not justly assert a claim on the freight; if the proceeds of the ship are exhausted, without satisfying the amount of their wages. No authority has been produced against it; and we think it justly deducible from the general doctrines of the maritime law on this subject.

It has been argued that the admiralty has no jurisdiction in this case; but we are of opinion that the objection is unfounded. Over the subject of seamen's wages, the admiralty has an undisputed jurisdiction, in rem, as well as in personam; and wherever the lien for the wages exists and attaches upon proceeds, it is the familiar practice of that court to exert its jurisdiction over them, by way of monition to the parties holding the proceeds. This is familiarly known in the cases of prize, and bottomry, and salvage; and is equally applicable to the case of wages.

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In respect to the claim of the assignees to hold the proceeds for their exclusive use, as bona fide purchasers; we think it cannot be maintained in point of law. In respect to the ship and its proceeds, they stand in no better situation than the original owners. They take the title, cum onere. The lien will follow the ship, and its proceeds, into whosever hands they may come by title or purchase from the owner. In respect to the freight, the same consideration does not necessarily apply. But here the assignees (though there is no doubt that they are bona fide holders) have taken their assignments as mere securities for antecedent debts; and had either actual or constructive notice of the claims of the seamen, when they received their conveyances. There was not only the *lis pendens* to affect them with constructive notice; but the very circumstance of the derivation of their title from the owners was sufficient to put them upon inquiry. It was indispensable to enable them to make an available claim before the commissioners. So that in both views they are unprotected, as against the libellants.

This view of the matter disposes of the principal questions necessary for the decision of the cause; as we are of opinion that the whole proceeds of the ship and freight, in the hands of the assignees, are liable to the payment of the seamen's wages. We think there is no claim whatsoever upon the proceeds of the cargo; as that is not in any manner hypothecated, or subjected to the claim for wages.

It has been supposed, at the argument, that there is some repugnancy in the petition of the seamen, in asserting a claim for wages on the ground that the voyage was illicit; and in asserting a claim against the proceeds in the hands of the assignees, upon the ground that the voyage was lawful, and therefore the award of compensation to the owners was rightful. But upon a just consideration of the matter, no such repugnancy exists. The allegation on the part of the seamen is, that they shipped on one voyage, which was lawful, and that they were carried on another voyage, for which they did not ship; and in which the ship was seized, and they were imprisoned for being engaged in an illicit trade. Now the voyage in respect to them might be wholly tortious and illicit, because it was not within the scope of their contract; and they may have been thereby subjected to all the consequences of an

illicit trade, although, as between the owners and the Spanish authorities, the voyage may have been specially permitted as an exception to the general colonial prohibitions, or at least may not have been disapproved of in the particular instance. If the king of Spain had a right to make the seizure, and pursue it to condemnation; yet he might, under all the circumstances, deem it just or expedient, as between the owners and himself, to order restitution; and when such restitution was so made, as between himself and them, the voyage might be deemed no longer subject to the imputation of illegality. If the order of restitution was not complied with, it constituted a good claim against Spain; and consequently a good claim under the Florida treaty.

The award of the commissioners is conclusive on this subject; but it concludes no more than its own correctness. Suppose the ship, after a seizure and condemnation by the local Spanish authorities, had, upon appeal, been specifically restored by the king of Spain; there is no pretence to say that she might not have been proceeded against in the admiralty, for the full compensation of the seamen. Their right to such compensation, in such a case, would depend, not upon the fact whether there were an illegal service or not; but upon the fact whether there had been an unjustifiable deviation from the voyage contracted for; and there is no legal distinction, as has been already stated, between proceeding against the ship and against the proceeds restored in value.

In respect to the claim of interest made by the libellants, we are of opinion that under the peculiar circumstances of this case, none ought to be allowed upon their wages; except for the period of time which has elapsed since the petition was filed against the assignees and owners on the 1st of December 1825. The previous delay was, as it seems to us, either a voluntary delay, assented to by all parties; or else, under circumstances of so much doubt as to the nature and extent of the claim, as ought to preclude any claim for interest. The assignees having had the funds in their hands since that period, must be presumed to have made interest on them; and therefore, there is no hardship in considering them liable to pay interest to the seamen.

The cause not having been heard upon the merits, either in

the district or circuit court, it is impossible for this court to ascertain the precise amount to which the libellants are respectively entitled; without a reference to a commissioner to ascertain and report the amount, upon the principles already stated. It will be necessary, therefore, to remand the cause to the circuit court for this purpose; and it is to be understood, in order to avoid any further delays, that the commissioner is to proceed with all reasonable despatch; and is to report to the court the amount due to each seaman as soon as he shall ascertain the same: so that each may have a separate decree (as in libels of this sort he well may), for his own share, without waiting for any final decree upon the claims of the others.

Where the exact time of the return of any seaman cannot be ascertained, the commissioner will make an average estimate, as near as the facts will enable him to do so. In case of the death of any seaman, who is a libellant, his administrator is to be brought before the court before any final decree is entered upon his claim.

A special order will be drawn up by the court, to be sent to the circuit court for its direction upon these points; and the decree of the circuit court is reversed, and the cause remanded accordingly.

This cause came on to be heard on the transcript of the record from the circuit court of the United States, for the district of Maryland, and was argued by counsel; on consideration whereof, it is ordered, adjudged, and decreed by the court, that the decree of the circuit court affirming the decree of the district court dismissing the libels and petition, in this cause be, and the same is hereby reversed: and this court, proceeding to render such decree as the circuit court ought to have rendered; it is further ordered, adjudged and decreed, that the libellants are entitled to full wages according to the terms of their original shipping articles or contract, from the time of their shipping until their return and arrival in the United States, after the seizure of the said ship Warren and cargo, in the manner in the proceedings mentioned; deducting therefrom any advance wages paid to them, and any wages earned by them in any employment in the intermediate period;

and that a decree be entered against the owners of the said ship in the said proceedings mentioned, for the amount of such wages, as soon as the same shall be ascertained in the manner hereinafter stated, with interest thereon, from the 1st day of December 1825.

And it is further ordered, adjudged and decreed, that a decree be rendered against the other respondents in this cause for the payment of the same wages when so ascertained, with interest as aforesaid out of the funds and proceeds (but not exceeding the funds, and proceeds) of the said ship Warren, and freight received by them under the assignments and the award of the commissioners under the treaty with Spain in the said proceedings mentioned: to wit: out of the sum of twenty-five thousand dollars awarded for the said ship; and the sum of thirteen thousand eight hundred and sixty dollars awarded for the freight thereof; according to the proportions thereof by them respectively received as aforesaid: and that interest at the rate of six per cent per annum, be paid by them and considered as a part of the said funds and proceeds, from the time when the petition and libel against them was filed: to wit: from the 1st day of December 1825, until the time when a final decree is and shall be made in the premises by the circuit court; or until the same funds and proceeds shall by order of the circuit court be brought into the registry of the court.

And it is further ordered, and adjudged and decreed, that this cause be remanded to the circuit court with the following directions.

1. To refer it to the commissioner to ascertain, from the evidence, and proceedings, and other proper evidence; the amount due to each of the libellants, for wages and interest thereon; upon the principles stated in this decree. And that he be required, forthwith, and as soon as may be, to proceed upon this duty, and to report to the circuit court the amount due to each of the libellants separately, as soon as he shall have ascertained the same; so that a separate and several decree may be entered therefor to each libellant respectively.

2. In cases where the exact time of the return of any of the libellants cannot be ascertained, the commissioner is to make

an average estimate of the time, as near as the facts will enable him to do so, and to report accordingly.

3. In cases where any of the libellants have died during the pendency of the proceedings in this suit, no final decree is to be entered in respect to such libellant, until his personal representatives shall become party to the suit.

Mr Taney, of counsel for the appellees in this cause, filed the following suggestions in writing:

"The supreme court having announced their intention to send a special direction to the circuit court, stating the principles on which this case is to be finally settled; and the case on the part of the assignees, who are appellees, having been prepared merely with a view to obtain the decision of this court on the points which have been argued and decided; they pray that they may be allowed to offer further proof, on the following points, either in this court or the circuit court. 1. The expenses incurred by the owners in prosecuting this claim in Spain, in order to procure the order of restoration. 2. The expenses of the assignees in prosecuting the claim before the commissioners under the Florida treaty. 3. The amount of the compensation to which the assignees are entitled for their services, as general agents for those interested in the fund. 4. The said appellees beg leave also to be permitted to offer in evidence, either in this court or in the circuit court, the records of the proceedings against them in the said court, sitting as a court of chancery, in relation to the fund now in question; in which said proceedings the money received by them, under the award of the commissioners under the Florida treaty, was by order of the said circuit court, paid into court by the aforesaid assignees, and by the decree of the said court, distributed among certain claimants. 5. The said appellees also pray to be permitted to offer in evidence, the record of the proceedings in the chancery court of Maryland, in relation to a part of the said fund; so that, in case there should be a conflict of the jurisdiction, they may not be made liable to pay the amount due into both courts."

The counsel for the appellee, on these suggestions, moved the court to rescind and annul the decree entered in this cause; and for leave to reargue the same.

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This motion was opposed by the counsel for the appellants; and an argument in writing, for and against the motion, was submitted.

Afterwards the court made the following order:

And now, upon another and subsequent day of said January term, upon hearing the written motion made in behalf of the assignees, who are respondents in the said cause, and the arguments thereon, by the parties; it is further ordered, adjudged, and decreed by this court; that the said assignees shall be allowed, in taking an account of the funds in their hands, to deduct therefrom a portion, pro rata, of the disbursements and expenses which have been actually incurred by them in prosecuting their claim before the commissioners, under the Florida treaty, in the proceedings mentioned; and also shall be allowed to deduct therefrom two and one half per cent commission, as a compensation for their services, in and about the prosecution thereof as aforesaid; and for this purpose they shall be allowed to produce new proofs before the said circuit court, and any commissioner appointed by the said court to take an account in the premises. But the parties (respondents) shall not be at liberty to adduce any proof of, or be allowed to deduct from said funds any expenses, or disbursements, or charges, incurred by the owners of the said ship Warren, in Spain, or otherwise; in order, to procure the royal order of restoration in the said proceedings mentioned. And it is further ordered, adjudged, and decreed, that the said assignees shall be at liberty to offer in evidence the proceedings in the said chancery suits, in the said written motion, mentioned in the said circuit court, and before the commissioner aforesaid; reserving to the said circuit court, and commissioner respectively, the full right and liberty to judge whether the same suits, or either of them, are properly admissible, or competent as evidence, in any matter before the said court, or commissioner, under the farther proceedings in this cause, to be had in the said circuit court.

Mr Justice BALDWIN dissented from the order in relation to the proceedings in the circuit court, and the allowance of a commission to the defendants.